

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

Debtor(s)

Chapter 13  
Case No. 04-44083

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OBJECTION TO CONFIRMATION OF PLAN

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Secured creditor Deutsche Bank National Trust Company, as custodian or trustee hereby objects to the confirmation of the plan proposed by Debtor above-named on the basis that:

Debtor commenced a Chapter 13 proceeding on January 20, 2004 as Case No. 04-40273. Debtor became delinquent on his post-petition payments to Deutsche Bank National Trust Company, as custodian or trustee and on April 19, 2004, Deutsche Bank National Trust Company, as custodian or trustee was granted relief from the automatic stay. By Order dated July 13, 2004 the Court granted the Chapter 13 Trustee's motion and dismissed the bankruptcy. The present Chapter 13 petition was filed on July 22, 2004. Accordingly, pursuant to 11 U.S.C. Section 109 (g)(1) Debtor was not eligible for Chapter 13 protection at the time that the petition herein was filed; and

The time in which Debtor's pre-petition arrearages will be paid in full to Movant constitutes an unreasonable period of time pursuant to 11 U.S.C. Section 1322(b), 11 U.S.C. Section 1322(c) and 11 U.S.C. Section 1325(a) and (a)(3).

Dated: September 30, 2004

USSET & WEINGARDEN P.L.L.P

By: E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

Chapter 13  
Case No. 04-44083

Debtor(s)

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NOTICE OF HEARING AND MOTION TO  
OBJECT TO CONFIRMATION OF PLAN  
AND DISMISSAL OF CHAPTER 13 CASE

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TO: Vlastimil Mach and Monica Mach, and other entities specified in Local Rule 1204(a).

A. Deutsche Bank National Trust Company, as custodian or trustee, ("Movant"), a corporation organized and existing under the laws of the State of CALIFORNIA, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

B. The objection to confirmation of the plan will be heard at the confirmation hearing on the Debtor Chapter 13 Plan scheduled at 10:30 am on October 7, 2004, in Courtroom 7 West, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

C. Any response to this motion must be filed and delivered not later than 10:30 am on October 6, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 4, 2004, which is three days before the time set for the hearing. If there is no response to this Motion within the time provided by law, the matter may be heard as a default by the Court.

D. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 201. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 22, 2004. The case is now pending in this court.

E. This motion arises under 11 U.S.C. §1307(c)(5), and 11 U.S.C. §1324 and Federal Rules of Bankruptcy Procedure 1017(d), 3015(f), 9014 and Local Rules 1201-1215. Movant requests denial of confirmation of Debtor Chapter 13 Plan and dismissal of the Chapter 13 case.

F. Movant has a perfected first mortgage interest in the Debtor homestead as shown on Exhibit A and objects to confirmation of the plan proposed by the Debtor above-named on the basis that:

1. The plan has not been proposed in good faith.

a. Debtor commenced a previous Chapter 13 proceeding on January 20, 2004 as Case No. 04-40273. Debtor became delinquent on his post-petition payments to Movant and on April 19, 2004 Movant filed a motion for relief from the automatic stay which motion was granted on May 6, 2004

b. The present Chapter 13 petition was filed on July 22, 2004, thereby terminating a pending foreclosure sale, which was scheduled for July 23, 2004.

c. Under the plan filed in the prior bankruptcy, Debtor was to pay \$900.00 per month to the Trustee. Under their current plan, Debtor proposes to pay \$1,500.00 to the Trustee. There appears to be no substantial employment change listed on Schedule I, although Debtors' allege to be collecting an additional \$420.00 per month in income.

d. Debtor has failed to make any post-petition payments to Movant and are now due for the months of August, 2004 through September, 2004 in the amount of \$2,937.84. Movant has received no mortgage payments from the Debtor since November, 2002. Debtor is contractually due for December, 2002.

e. Movant alleges that the current bankruptcy was filed on the eve of foreclosure for the sole purpose of preventing the foreclosure sale and has not been made in good faith as required by 11 U.S.C. 1325 (a)(1) and/or that the plan as proposed by Debtor is not feasible as required by 11 U.S.C. 1325 (a)(6). Movant further alleges that the Debtors are not eligible for bankruptcy protection pursuant to 11 U.S.C §109 (g)(1). See In Re Montgomery 37 F.3d 413 (8<sup>th</sup> Cir. 1994)

2. The plan does not provide for the cure of the mortgage arrearages within a reasonable period of time.

a. At the time that the present bankruptcy was filed, Debtor was delinquent on his mortgage payments to Movant from December, 2002 through July, 2004 for a total amount due of \$21,418.90 together with late charges pursuant to the terms of the mortgage as well as attorney's fees and costs incurred in the two prior foreclosure proceedings and bankruptcy proceedings for a total delinquency of \$40,709.58.

b. Debtor proposes, in his plan, to pay \$1,500.00 per month to the Trustee. Based on the amount of the delinquency, and factoring in the Trustee's share, Movant estimates that the earliest that its claim could be paid in full is 30 months from the inception of the plan.

c. The time required for the payment of Debtor's pre-petition arrearages to Movant constitutes an unreasonable period of time pursuant to 11 U.S.C.

Section 1322(b)(5), and 11 U.S.C. Section 1325(a)(1) and (a)(3). See In Re Newton, 161 Bky Rptr. 207 (D. Minn. 1993).

WHEREFORE, Deutsche Bank National Trust Company, as custodian or trustee by its undersigned attorney, moves the Court for an Order denying confirmation of the Debtor's plan and dismissal of the Chapter 13 case.

Dated: September 30, 2004.

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356

Brian H. Liebo #277654

Attorney for Movant

4500 Park Glen Road, #120

Minneapolis, MN 55416

(952) 925-6888

0044357119

TR.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

AFFIDAVIT OF PETITIONER

Debtor(s)

Chapter 13, Case No. 04-40273

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STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

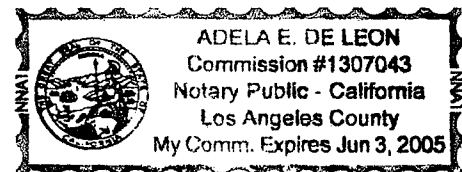
Heather Potee, being first duly sworn, deposes and states on oath that she is employed by Deutsche Bank National Trust Company formerly known as Bankers Trust Company of California, N.A., as Trustee for Long Beach Mortgage Loan Trust 2001-2, as custodian or trustee, the movant in this action, that she has read the annexed Notice of Hearing and Motion to Object to Confirmation of Plan and Dismissal of Chapter 13 Case, and that it is true of her knowledge to the best of her information.

Heather Potee

Subscribed and sworn to before me this  
15 day of Sept., 2004.

Adela De Leon

Notary Public: Adela De Leon



and  
monica L.  
much,  
H&W

(5) S.

7638344

OFFICE OF THE CLERK  
KERN COUNTY, CALIFORNIA

2002 JAN 29 PM 12:39

7638344

*[Signature]*

[Space Above This Line For Recording Data]

# MORTGAGE

Page 1 of 2  
Lender: 7638344  
Borrower: 7638344  
Date: 01/29/2002  
Time: 12:39:00

THIS MORTGAGE ("Security Instrument") is given on January 2, 2002  
The mortgagor is VLASTIMIL V MACH, A MARRIED MAN

("Borrower"). This Security Instrument is given to LONG BEACH MORTGAGE COMPANY

which is organized and existing under the laws of the State of Delaware, and whose  
address is 1100 TOWN & COUNTRY ROAD, ORANGE, CA 92868

("Lender"). Borrower owes Lender the principal sum of  
One Hundred Thirty Thousand and no/100

Dollars (U.S. \$ 130,000.00)

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
February 1, 2032 and for interest at the yearly rate of 12.900

percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

Form 3024 9/80  
Amended 7/93  
Page 1 of 2

Form 3024 9/80  
Amended 7/93  
Page 1 of 2

*[Signature]*



LC11681T

FORM 10325911-14

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in HENNEPIN County, Minnesota:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

which has the address of 11908 QUEBEC CIRCLE, CHAMPLIN Minnesota 55316 (Zip Code) ("Property Address");

(Street, City,

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time

6HIMN1 HCB

Form 3024 9/90

Form 3024 9/90

TDW42 (03/29/71) LK

Loan No. 4073789-30328

LEGAL DESCRIPTION

LOT 11, BLOCK 4, CHAMPLIN RIVER PARK, HENNEPIN COUNTY, MINNESOTA.

Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument to Borrower. Borrower shall pay any reconduction costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

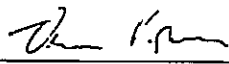
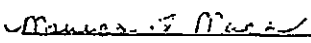
24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider          | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Others(s) (specify)            |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____		_____ (Seal)
	VLASTIMIL V MACH	Borrower
_____		_____ (Seal)
	MONICA L. MACH	Borrower
_____ (Seal)		_____ (Seal)
Borrower		Borrower
_____ (Seal)		_____ (Seal)
Borrower		Borrower
_____ (Seal)		_____ (Seal)
Borrower		Borrower

6HUMN1 9/90

Form 3024 9/90

TDALC7.00/23/01 UN

Loan No. 4073789-30328

STATE OF MINNESOTA.

HENNEPIN

County ss:

On this 2<sup>nd</sup> day of January - 2002, before me appeared  
VLASTIMIL V. MACH AND MONICA L. MACH, HUSBAND AND WIFE

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that  
executed the same as free act and deed.

  
Notary Public  
My Commission Expires:

This instrument was drafted by

LONG BEACH MORTGAGE COMPANY



Tax statements for the real property described in this instrument should be sent to:

VLASTIMIL V. MACH  
11908 Quebec Circle North  
Champlin, MN 55316

CC 11681T

5C  
1

OFFICE OF COUNTY RECORDER  
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR  
RECORDED ON

8213639

2003 NOV -4 PM 1:53

AS DOCUMENT # 8213639  
*Michael H. Cunniff* CO. REC.

BY *[Signature]* DEPUTY

ASSIGNMENT OF MORTGAGE

Date: *October 30, 2003*

FOR VALUABLE CONSIDERATION, Long Beach Mortgage Company, a corporation under the laws of Delaware, Assignor, hereby sells, assigns, transfers to Deutsche Bank National Trust Company, a national banking association F/K/A Bankers Trust Company of California, N.A., as Trustee for Long Beach Mortgage Loan Trust 2001-3, Assignee, the Assignor's interest in the Mortgage dated January 2, 2002, executed by Vlastimil V. Mach and Monica L. Mach, husband and wife, as mortgagor(s) to Long Beach Mortgage Company as mortgagee, filed for record in the office of the County Recorder of the County of Hennepin and State of Minnesota, on January 29, 2002, and recorded as Document No. 7638344 together with all right and interest in the land therein described, and in the note and obligations therein specified, and to the debt thereby secured.

**Metro Legal Services Inc.**  
**Box 491**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

Chapter 13  
Case No. 04-44083

Debtor(s)

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MEMORANDUM OF LAW

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**FACTS**

The facts in this matter are as detailed in Movant's Motion which are incorporated herein by reference. Deutsche Bank National Trust Company, as custodian or trustee ("Movant") is a secured creditor of the Debtor and holds a perfected first mortgage on the Debtor's residence. Movant submits this Memorandum of Law in Support of its Motion to Object to Confirmation of Plan and Dismissal of the Chapter 13 Case.

**ARGUMENT**

Movant asserts that the Plan as proposed does not provide for cure within a reasonable period of time contrary to 11 U.S.C. §1322(b)(5) and cannot be confirmed pursuant to 11 U.S.C. §1325(a)(1), 1325(a)(3). In re: Newton, 167 BR. 207 (Bky D. MN 1993); In re: Brady, 86 BR. 166 (Bky D. MN 1988).

Based on the amount of the pre-petition delinquency, it will take Debtor approximately 30 months to cure. Based on the relevant factors described in the Motion, this is a patently unreasonable period of time. In Re Newton, supra.

At the confirmation hearing Movant believes the Court will deny confirmation of the Debtor's Plan. Pursuant to 11 U.S.C. §1307(c)(5) on request of a party in interest and after notice and a hearing, the court may dismiss the case for denial of confirmation under §1325. In

the present case, Movant asserts that cause for dismissal exists based upon the Debtor's inability to present a confirmable plan to the Court.

WHEREFORE, Movant respectfully requests this Court to deny confirmation of the Plan and dismiss the Chapter 13 Case, and such other and further relief as may be just and equitable in the premises.

Dated: September 30, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo

Paul A. Weingarden, #115356

Brian H. Liebo #277654

Attorney for Movant

4500 Park Glen Road, #120

Minneapolis, MN 55416

(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

Chapter 13  
Case No. 04-44083

Debtor(s)

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UNSWORN DECLARATION FOR PROOF OF SERVICE

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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 30, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by facsimile where noted and by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
612-664-5516

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402  
612-338-4529

Craig W. Andresen  
Attorney at Law  
2001 Killebrew Drive, Suite 330  
Bloomington, MN 55425  
952-854-4114

Vlastimil Mach  
Monica Mach  
11908 Quebec Circle  
Champlin, MN 55316

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Vlastimil Mach  
Monica Mach

Chapter 13  
Case No. 04-44083

Debtor(s)

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ORDER

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The above entitled matter came on for hearing upon motion of Deutsche Bank National Trust Company, as custodian or trustee pursuant to 11 U.S.C. Section 1307 on April 1, 2004, at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that:

1. Confirmation of the Debtor's Chapter 13 Plan is hereby denied.
2. The Chapter 13 Case herein is hereby dismissed.

Dated this \_\_ day of \_\_\_\_\_, 2004.

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Judge of the Bankruptcy Court